

# EDEN



*Eden Environmental Citizen's Group, LLC*

July 18, 2019

Via US Mail, Certified USPS Tracking No. 9407 1118 9956 1472 3149 61

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Via US Mail and Email

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Via US Mail

CT Corporation System  
Agent for service  
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**Re: FIRST AMENDED 60-Day Notice of Violations and Intent to File Suit Under the  
Federal Water Pollution Control Act ("Clean Water Act")**

To Officers, Directors, Operators, Property Owners and/or Facility Managers of California  
Cascade Building Materials, Inc.:

This letter amends the previous Notice Letter sent to the Facility on March 5, 2019, on behalf of Eden Environmental Citizen's Group ("EDEN"), and is to give legal notice that EDEN intends to file a civil action against California Cascade Building Materials ("Discharger") and

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CanWel Building Materials Group, Ltd., its parent corporation, as well as Amar S. Doman, its Chief Executive Officer, for violations of the Federal Clean Water Act (“CWA” or “Act”) 33 U.S.C. § 1251 *et seq.*, that EDEN believes are occurring at the California Cascade Building Materials facility located at 7512 14th Avenue in Sacramento, California (“the Facility” or “the site”).

EDEN is an environmental citizen’s group established under the laws of the State of California to protect, enhance, and assist in the restoration of all rivers, creeks, streams, wetlands, vernal pools, and tributaries of California, for the benefit of its ecosystems and communities.

EDEN formally registered as a limited liability company (LLC) association with the California Secretary of State on June 22, 2018; however, since at least July 1, 2014, EDEN has existed as an unincorporated environmental citizen’s association with members who remain associated with EDEN as of the date of this Notice.

As discussed below, the Facility’s discharges of pollutants degrade water quality and harm aquatic life in the Facility’s Receiving Waters, which are waters of the United States and described in Section II.B, below. EDEN has members throughout California. Some of EDEN’s members live, work, and/or recreate near the Receiving Waters and use and enjoy the Receiving Waters for surfing, kayaking, camping, fishing, boating, swimming, hiking, cycling, bird watching, picnicking, viewing wildlife, and/or engaging in scientific study.

At least one of EDEN’s current members has standing to bring suit against the Discharger, as the unlawful discharge of pollutants from the Facility as alleged herein has had an adverse effect particular to him or her and has resulted in actual harm to the specific EDEN member(s).

Further, the Facility’s discharges of polluted storm water and non-storm water are ongoing and continuous. As a result, the interests of certain individual EDEN members have been, are being, and will continue to be adversely affected by the failure of California Cascade Building Materials to comply with the General Permit and the Clean Water Act.

CWA section 505(b) requires that sixty (60) days prior to the initiation of a civil action under CWA section 505(a), a citizen must give notice of intent to file suit. 33 U.S.C. § 1365(b). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency (“EPA”), and the State in which the violations occur.

As required by CWA section 505(b), this Notice of Violation and Intent to File Suit provides notice to the Discharger of the violations which have occurred and continue to occur at the Facility. After the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, EDEN intends to file suit in federal court against the Discharger under CWA section 505(a) for the violations described more fully below.

## **I. THE SPECIFIC STANDARD, LIMITATION, OR ORDER VIOLATED**

EDEN's investigation of the Facility has uncovered significant, ongoing, and continuous violations of the CWA and the General Industrial Storm Water Permit issued by the State of California (NPDES General Permit No. CAS000001 [State Water Resources Control Board ("SWRCB")] Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ ("1997 Permit") and by Order No. 2014-0057-DWQ ("2015 Permit") (collectively, the "General Permit").

Information available to EDEN, including documents obtained from California EPA's online Storm Water Multiple Application and Reporting Tracking System ("SMARTS"), indicates that on or around July 7, 2015, California Cascade Building Materials submitted a Notice of Intent ("NOI") to be authorized to discharge storm water from the Facility. California Cascade Building Materials' assigned Waste Discharger Identification number ("WDID") is 5S34I025795.

As more fully described in Section III, below, EDEN alleges that in its operations of the Facility, the Discharger has committed ongoing violations of the substantive and procedural requirements of the Federal Clean Water Act, California Water Code §13377; the General Permit, the Regional Water Board Basin Plan, the California Toxics Rule (CTR) 40 C.F.R. § 131.38, and California Code of Regulations, Title 22, § 64431.

## **II. THE LOCATION OF THE ALLEGED VIOLATIONS**

### **A. The Facility**

The location of the point sources from which the pollutants identified in this Notice are discharged in violation of the CWA is California Cascade Building Materials' permanent facility address of 7512 14th Avenue in Sacramento, California.

The California Cascade Building Materials facility is a 20-acre lumber remanufacturing and distribution plant with on-site equipment utilized for re-sawing, planing, treating, molding and kiln drying of the logs, poles, beams and raw lumber delivered to the Facility, including Douglas fir, Hem fir, Cedar, Whitewood, Redwood and plywood. The Facility saws, planes, molds and treats the raw wood and timber into construction materials it sells wholesale to retail lumber companies and businesses such as Home Depot.

The finished materials it produces on-site for wholesale distribution include pressure treated lumber and plywood (NatureWood ACQ and Advance Guard Borate); Redwood, Cedar and Composite Decking; Fencing (fence panels, pickets, posts and rails); Redwood and Cedar siding; and finishing and landscaping products such as Garden Postcaps, Benderboard, Lattice, Fascia/Trim and Stakes.

In addition, California Cascade Building Materials operates an interstate trucking operation (with numerous trucks and drivers) which transports logs, poles, beams, lumber and building materials, and is licensed under U.S. Department of Transportation, Federal Motor Carrier Safety Administration Carrier No. 2786835, and provides on-site maintenance and repair for its trucks.

Facility operations are covered under Standard Industrial Classification Codes (SIC) 2421 (General Sawmills and Planing Mills), 2431 (Millwork, Plywood and Wood Planing), 2491 (Wood Preserving), 5031 (Wholesale Distribution of Lumber), 4213 (Trucking, except local), and 7538 (truck/fleet maintenance and repair).

Based on the EPA's Industrial Storm Water Fact Sheet for Sector A –Wood and Timber Products, polluted discharges from operations at the Facility contain bark and wood debris, toxic metals, such as lead, cadmium, arsenic and copper; total suspended solids ("TSS"); chemical oxygen demand (COD; biochemical oxygen demand (BOD); diesel; fuel; solvents; and oil and grease ("O&G"). Many of these pollutants are on the list of chemicals published by the State of California as known to cause cancer, birth defects, and/or developmental or reproductive harm.

Information available to EDEN indicates that the Facility's industrial activities and associated materials are exposed to storm water, and that each of the substances listed on the EPA's Industrial Storm Water Fact Sheet is a potential source of pollutants at the Facility.

#### **B. The Affected Receiving Waters**

The Facility discharges into the American River, a tributary of the Sacramento River ("Receiving Waters").

The Sacramento River is a water of the United States. The CWA requires that water bodies such as the Sacramento River meet water quality objectives that protect specific "beneficial uses." The Central Valley Regional Water Board has issued its *Water Quality Control Plan for the Sacramento and San Joaquin River Basins* ("Basin Plan") to delineate those water quality objectives.

The Basin Plan identifies the "Beneficial Uses" of water bodies in the region. The Beneficial Uses for the Receiving Waters downstream of the Facility include: Municipal and Domestic Supply (MUN), Agricultural Supply (AGR), Industrial Process Supply (PRO), Industrial Service Supply (IND), Navigation (NAV), Water Contact Recreation (REC-1), Non-contact Water Recreation (REC-2), Warm Freshwater Habitat (WARM), Cold Freshwater Habitat (COLD), Wildlife Habitat (WILD), Migration (MIGR), and Spawning, Reproduction, and/or Early Development (SPWN).

Polluted storm water and non-storm water discharges from industrial facilities, such as the Facility, contribute to the further degradation of already impaired surface waters, and harm aquatic dependent wildlife.

### III. VIOLATIONS OF THE CLEAN WATER ACT AND GENERAL PERMIT

#### A. Deficient SWPPP

California Cascade Building Materials' Storm Water Pollution Prevention Plan ("SWPPP") and Site Map dated February 8, 2012, which it had uploaded to SMARTS on July 7, 2015 (when it applied for NPDES coverage under California's 2014 Industrial General Permit), contained numerous deficiencies which were outlined in EDEN's Notice Letter dated March 5, 2019.

In response to EDEN's March 5, 2019 Notice Letter, California Cascade Building Materials amended its SWPPP and uploaded a revised SWPPP to SMARTS on May 2, 2019, which was certified on April 30, 2019 by Jacob Burns, Mill Manager.

The Discharger's current SWPPP is still inadequate and fails to comply with the requirements of the General Permit as specified in Section X of Order No. 2014-0057-DWQ, as follows:

- (a) The SWPPP omits the **date that it was initially prepared** and inaccurately lists the dates of each SWPPP Amendment (Section X.A.10). Specifically, Section 2.2 (Plan Review and Revision) states that the original SWPPP was written in June of 2015, which is false and misleading. The Facility's SWPPP that pre-dated the April 30, 2019, Facility SWPPP was in fact drafted and implemented in February of 2012, not June of 2015;
- (b) The SWPPP fails to include an appropriate discussion of ALL **Industrial Materials** handled at the facility, including the locations where the materials are stored, received, shipped and handled, and the quantities and handling frequency of the Industrial Materials (Sections X.A.3, X.F, X.G.1.a);
- (c) The SWPPP fails to discuss in detail **Facility operations and all industrial processes** at the facility, including manufacturing, cleaning, maintenance, recycling, disposal, and any other activities related to each industrial process; and the type, characteristics, and approximate quantity of industrial materials used in or resulting from the process. Areas protected by containment structures and the corresponding containment capacity are also required to be identified and described;
- (d) The SWPPP fails to include an adequate description of **Potential Pollutant Sources** and narrative assessment of all areas of industrial activity with potential industrial

pollutant sources, including Industrial Processes, Material Handling and Storage Areas, Dust and Particulate Generating Activities, Significant Spills and Leaks, Non-Storm Water Discharges and Erodible Surfaces (Section X.G);

- (e) The SWPPP fails to include an adequate discussion of the **Facility's receiving waters** (Section XI.B.6(e), Section X.G.2.ix), including a discussion of the Sacramento River and its tributaries for inclusion of appropriate 303(d) listings and TMDLs;
- (f) The SWPPP does not contain the proper **sampling parameters** for the Facility's SIC Codes (Section XI.B.6.d, Table 1, Section XI)). Specifically, Section 6.2.4 of the SWPPP indicates that the Facility is to sample its storm water run-off for only Total Suspended Solids (TSS), Oil & Grease (O&G) and pH. The Facility's SIC Codes of 2421, 2431 and 2491 require additional sampling parameters of COD, Zinc, Arsenic and Copper;
- (g) The SWPPP does not contain the proper **sampling parameters** for all potential pollutants present at the facility due to its industrial operations and industrial materials present at the facility (Section XI.B.6). Specifically, the SWPPP indicates that large quantities of Diesel Fuel, Motor Oil, Waste Oil, Grease and Ethylene Glycol are stored at the facility outdoors. In fact, the Facility has a fueling area with a 10,000-gallon Tank, and the Facility uses 5,000 gallons per day minimum. However, the SWPPP fails to include these pollutants as **additional sampling parameters**, in violation of Section XI.B.6.c of the General Permit;
- (h) The SWPPP fails to include in the SWPPP detailed and accurate information about its **Pollution Prevention Team** (Section X.D). Specifically, Section 2.4 of the SWPPP (Pollution Prevention Team) lists only general titles of Team members and does not identify any particular persons or employees responsible for implementation of the General Permit at the Facility. Furthermore, the SWPPP fails to identify the Facility's Legally Responsible Person or its Duly Authorized Representatives; and the SWPPP indicates that the Facility's Environmental Supervisor is responsible for enacting the Monitoring Implementation Plan. However, EDEN is informed and believes that California Cascade Building Materials currently does not have an Environmental Supervisor position; and
- (i) The SWPPP is invalid because it was **not certified and submitted by the Facility's Legally Responsible Person**. The SWPPP was certified by Jacob Burns, who is indicated in the SWPPP to be the Mill Manager, but not the Legally Responsible Person for the Facility. Pursuant to Section XII.K of the General Permit, all Permit Registration Documents (PRDs), including SWPPPs, must be certified and submitted by the Facility's authorized Legally Responsible Person.

Failure to develop or implement an adequate SWPPP is a violation of Sections II.B.4.f and X of the General Permit.

***B. Failure to Develop, Implement and/or Revise an Adequate Monitoring and Reporting Program Pursuant to the General Permit***

Section XI of the General Permit requires Dischargers to develop and implement a storm water monitoring and reporting program ("M&RP") prior to conducting industrial activities. Dischargers have an ongoing obligation to revise the M&RP as necessary to ensure compliance with the General Permit.

The objective of the M&RP is to detect and measure the concentrations of pollutants in a facility's discharge, and to ensure compliance with the General Permit's Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations. An adequate M&RP ensures that BMPs are effectively reducing and/or eliminating pollutants at the Facility, and it must be evaluated and revised whenever appropriate to ensure compliance with the General Permit.

**1. Failure to Conduct Visual Observations**

Section XI(A) of the General Permit requires all Dischargers to conduct visual observations at least once each month, and sampling observations at the same time sampling occurs at a discharge location.

Observations must document the presence of any floating and suspended material, oil and grease, discolorations, turbidity, odor and the source of any pollutants. Dischargers must document and maintain records of observations, observation dates, locations observed, and responses taken to reduce or prevent pollutants in storm water discharges.

EDEN alleges that between July 7, 2015, and the present, the Discharger has failed to conduct monthly and sampling visual observations pursuant to Section XI(A) of the General Permit.

**2. Failure to Collect and Analyze the Required Number of Storm Water Samples**

In addition, EDEN alleges that the Discharger has failed to provide the Regional Water Board with the minimum number of annual documented results of facility run-off sampling as required under Sections XI.B.2 and XI.B.11.a of Order No. 2014-0057-DWQ, in violation of the General Permit and the CWA.

Section XI.B.2 of the General Permit requires that all Dischargers collect and analyze storm water samples from two Qualifying Storm Events (“QSEs”) within the first half of each reporting year (July 1 to December 31), and two (2) QSEs within the second half of each reporting year (January 1 to June 30).

Section XI.C.6.b provides that if samples are not collected pursuant to the General Permit, an explanation must be included in the Annual Report.

As of the date of this Notice, the Discharger has failed to upload into the SMARTS database system:

- a. Two storm water sample analyses for the time period July 1, 2015, through December 31, 2015;
- b. Two storm water sample analyses for the time period January 1, 2016, through June 30, 2016;
- c. One storm water sample analysis for the time period July 1, 2016, through December 31, 2016;
- d. Two storm water sample analyses for the time period January 1, 2017, through June 30, 2017;
- e. Two storm water sample analyses for the time period July 1, 2017, through December 31, 2017;
- f. Two storm water sample analyses for the time period January 1, 2018, through June 30, 2018; and
- g. One storm water sample analysis for the time period July 1, 2018, through December 31, 2018.

**In fact, the Facility has only collected, analyzed and uploaded into SMARTS four storm water sample since it received General Permit coverage.**

### 3. Failure to Upload Storm Water Sample Analyses within 30 Days

Section XI.B.11.a of the General Permit requires Dischargers to submit all sampling and analytical results for all individual or Qualified Combined Samples via SMARTS within 30 days of obtaining all results for each sampling event.

California Cascade Building Materials failed to upload into SMARTS within 30 days the following sampling and analytical results pursuant to Section XI.B.11.a of the General Permit:



<b>Sample Date</b>	<b>Date of Laboratory Report</b>	<b>Date Uploaded into SMARTS</b>	<b>Length of Time Late</b>
12/15/16	1/25/17	8/21/18	1 year, 7 months
11/29/18	12/18/18	5/2/19	Five months

4. Failure to Collect Samples From Each Drainage Area at all Discharge Locations

Section XI.B.4 of the General Permit requires Dischargers to collect samples from all discharge locations, regardless of whether the discharges are substantially similar. Dischargers may analyze a combined sample consisting of equal volumes, collected from as many as four substantially similar discharge locations, provided that the Discharger submits a Representative Sampling Reduction Justification form with its sample analysis, and the samples are combined in the lab in accordance with Section XI.C.5 of the General Permit. Furthermore, Representative sampling is only allowed for sheet flow discharges or discharges from drainage areas with multiple discharge locations.

According to California Cascade Building Materials' current SWPPP, the Facility has five (5) discharge locations, listed as Sampling Locations SW1 through SW5. The storm water runoff sample analyses the Facility uploaded for samples collected on November 29, 2018, April 2, 2019 and May 16, 2019, failed to include samples from all five Outfalls.

Furthermore, the Facility did not submit a Representative Sampling Reduction Justification form with any of its sample analyses.

5. Failure to Analyze Storm Water Samples for the Correct Parameters

General Permit sections XI.B.6.a and XI.B.6.b require all Dischargers to analyze for the following three parameters, regardless of facility type: pH, Total Suspended Solids (TSS) and Oil & Grease (O&G).

Section XI.B.6.d of the General Permit requires additional applicable parameters listed in Table 1 of the General Permit (Additional Analytical Parameters), which are related to the facility's Standard Industrial Classification (SIC) code(s).

Furthermore, Section XI.B.6.c of the General Permit requires Dischargers to analyze for any additional parameters identified by the Discharger on a facility-specific basis that serve as indicators of the presence of all industrial pollutants identified in the Facility's SWPPP. The Facility's SWPPP indicates the following additional parameters are associated with the Facility's industrial operations: Diesel Fuel, Motor Oil, Waste Oil, Ethylene Glycol.

The Facility's SIC Codes of 2421, 2431 and 2491 require it to include the following as mandatory sampling parameters: Arsenic, Copper, Zinc and Chemical Oxygen Demand (COD). **EDEN notes that California Cascade Building Materials selected an incorrect SIC code on its NOI Application of 2499, Wood Products, NEC, which is not applicable to this Facility.**

California Cascade Building Materials' laboratory analytical reports for all samples collected to date fail to analyze for the required parameters of COD, Copper, Arsenic and Zinc and TPH.

**C. Falsification of Annual Reports Submitted to the Regional Water Board**

Section XXI.L of the General Permit provides as follows:

**L. Certification**

Any person signing, certifying, and submitting documents under Section XXI.K above shall make the following certification:

"I certify under penalty of law that this document and all Attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, to the best of my knowledge and belief, the information submitted is, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Further, Section XXI.N of the General Permit provides as follows:

**N. Penalties for Falsification of Reports**

Clean Water Act section 309(c)(4) provides that any person that knowingly makes any false material statement, representation, or certification in any record or other document submitted or required to be maintained under this General Permit, including reports of compliance or noncompliance shall upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than two years or by both.

On September 21, 2017, California Cascade Building Materials submitted its Annual Report for the Fiscal Year 2016-17. The Report was signed under penalty of law by Jacob Burns. Mr. Burns is the currently designated Legally Responsible Person ("LRP") for California Cascade Building Materials and appears to be the Facility Mill Manager.

Mr. Burns responded "Yes" to Question No. 3 on the Annual Report ("Did you sample the required number of Qualifying Storm Events during the reporting year for all discharge

locations, in accordance with Section XI.B?") However, as discussed above, California Cascade Building Materials failed to collect and analyze the required number of storm water samples during the 2016-17 reporting year.

Based on the foregoing, it is clear that Mr. Burns made a false statement in the Facility's 2016-17 Annual Report.

On May 3, 2019, Mr. Burns uploaded a REVISED Annual Report for the 2016-17 Reporting Year which amended the response to Question No. 3 from "Yes" to "No", indicating as a reason: "Due to staffing changes, it is unknown if the facility completed the requirements of the General Permit, Conditions XI.A.1, XI.A2, XI.B, and XX.I.J.3." However, this response is still false and misleading.

Mr. Burns originally stated, under penalty of perjury, that the Facility had collected and analyzed the required number of storm water samples. There have been no "staffing changes" at the Facility that would impact storm water sampling. Mr. Burns has been the Facility Manager since at least August 1, 2015; and the Facility's current SWPPP indicates that the Facility Manager is the primary Pollution Prevention Team Member responsible for implementing the requirements of the General Permit. Thus, it would have been known to Mr. Burns whether or not the Facility had collected and analyzed the required number of storm water samples during the year.

It is also EDEN's position that subsequent revisions to a previously uploaded Annual Report containing false and fraudulent statements does not obviate the original filing of a false document with the Regional Water Board.

On May 3, 2019, the Facility uploaded to SMARTS Revised Annual Reports for the Reporting Years 2015-16 and 2017-18; and on July 12, 2019, the Facility uploaded its Annual Report for the Reporting Year 2018-19. All three reports were signed by Mr. Jacob Burns as the Mill Manager, and all three Annual Reports indicated that the Facility had not collected and analyzed the required number of storm water samples during each of the Reporting Years because there had not been enough rainfall or Qualifying Storm Events (QSEs) in the area during the years to produce sufficient discharge. Those claims are also false and fraudulent.

The Facility does not have any storm water containment systems on site. According to its SWPPP, the 20-acre Facility property is "mostly paved." The General Permit defines a QSE as a precipitation event that produces a discharge for at least one drainage area at the Facility. The Facility has five drainage/sampling areas, and it sampled three of them on April 2, 2019 and May 16, 2019, at only .33" of rainfall having occurred in the prior 24-hour period.

Records from the National Oceanic and Atmospheric Administration (NOAA) website/database confirm that during the reporting years in question there were in fact sufficient QSEs occurring near the Facility during or within 12 hours of the start of regular business hours

to have allowed California Cascade Building Materials to collect the requisite number of samples during the relevant Reporting Years.

**D. Failure to File Timely Annual Reports**

California Cascade Building Materials has failed to comply with Section XVI.A of the General Permit, which provides as follows: “The Discharger shall certify and submit via SMARTS an Annual Report no later than July 15th following each reporting year using the standardized format and checklists in SMARTS.”

California Cascade Building Materials’ Annual Report for the reporting year 2015-16 was due on or before July 15, 2016. However, the Facility failed to file the Annual Report until November 21, 2016. Likewise, the Facility Annual Reports for the reporting periods 2016-17 and 2017-18 were also filed late, on September 21, 2017, and August 22, 2018, respectively,

**E. Deficient BMP Implementation**

Sections I.C, V.A and X.C.1.b of the General Permit require Dischargers to identify and implement minimum and advanced Best Management Practices (“BMPs”) that comply with the Best Available Technology (“BAT”) and Best Conventional Pollutant Control Technology (“BCT”) requirements of the General Permit to reduce or prevent discharges of pollutants in their storm water discharge in a manner that reflects best industry practice, considering technological availability and economic practicability and achievability.

EDEN alleges that California Cascade Building Materials has been conducting industrial activities at the site without adequate BMPs to prevent resulting non-storm water discharges. Non-storm water discharges resulting from these activities are not from sources that are listed among the authorized non-storm water discharges in the General Permit, and thus are always prohibited.

California Cascade Building Materials’ failure to develop and/or implement adequate BMPs and pollution controls to meet BAT and BCT at the Facility violates and will continue to violate the CWA and the Industrial General Permit each day the Facility discharges storm water without meeting BAT and BCT.

**F. Discharges In Violation of the General Permit**

Except as authorized by Special Conditions of the General Permit, Discharge Prohibition III(B) prohibits permittees from discharging materials other than storm water (non-storm water discharges) either directly or indirectly to waters of the United States. Unauthorized non-storm water discharges must be either eliminated or permitted by a separate NPDES permit.

Information available to EDEN indicates that unauthorized non-storm water discharges occur at the Facility due to inadequate BMP development and/or implementation necessary to prevent these discharges.

EDEN alleges that the Discharger has discharged storm water containing excessive levels of pollutants from the Facility to its Receiving Waters during at least every significant local rain event over 0.1 inches in the last five (5) years.

EDEN hereby puts the Discharger on notice that each time the Facility discharges prohibited non-storm water in violation of Discharge Prohibition III.B of the General Permit is a separate and distinct violation of the General Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a).

1. Discharges in Excess of Technology-Based Effluent Limitations

The Industrial General Permit includes technology-based effluent limitations, which prohibit the discharge of pollutants from the Facility in concentrations above the level commensurate with the application of best available technology economically achievable (“BAT”) for toxic pollutants and best conventional pollutant control technology (“BCT”) for conventional pollutants. (General Permit, Section X.H.)

The EPA has published Benchmark values set at the maximum pollutant concentration levels present if an industrial facility is employing BAT and BCT, as listed in Table 2 of the General Permit. The General Permit includes “Numeric Action Levels” (“NALs”) derived from these Benchmark values; however, the NALs do not represent technology-based criteria relevant to determining whether an industrial facility has implemented BMPs that achieve BAT/BCT. (General Permit, Section I.M. (Finding 62)).

California Cascade Building Materials’ exceedances of Benchmark values identified in the table listed below, indicate that it has failed and is failing to employ measures that constitute BAT and BCT, in violation of the requirements of the Industrial General Permit. EDEN alleges and notifies California Cascade Building Materials that its storm water discharges from the Facility have consistently contained and continue to contain levels of pollutants that exceed Benchmark values as listed below.

These allegations are based on the Facility’s self-reported data submitted to the Regional Water Board. Self-monitoring reports under the Permit are deemed “conclusive evidence of an exceedance of a permit limitation.” *Sierra Club v. Union Oil*, 813 F.2d 1480, 1492 (9th Cir. 1988).

The Discharger’s ongoing discharges of storm water containing levels of pollutants above EPA Benchmark values and BAT- and BCT-based levels of control also demonstrate that it has not developed and implemented sufficient BMPs at the Facility. EPA Benchmarks are relevant

to the inquiry as to whether a facility has implemented BMPs. [*Cal. Sportfishing Prot. Alliance v. River City Waste Recyclers, LLC* (E.D.Cal. 2016) 205 F.Supp.3d 1128; *Baykeeper v. Kramer Metals, Inc.* (C.D.Cal. 2009) 619 F.Supp.2d 914, 925; *Waterkeepers Northern California v. AG Industrial Mfg. Inc.* (9th Cir. 2004) 375 F.3d 913, 919 (concentration levels in excess of EPA benchmarks are evidence supporting the citizen plaintiff's contention that defendant did not have appropriate BMPs to achieve BAT/BCT).]

California Cascade Building Materials' failure to develop and/or implement adequate BMPs and pollution controls to meet BAT and BCT at the Facility violates and will continue to violate the CWA and the Industrial General Permit each day the Facility discharges storm water without meeting BAT and BCT.

## **2. Discharges in Excess of Receiving Water Limitations**

In addition to employing technology based effluent limitations, the Industrial General Permit requires dischargers to comply with Receiving Water Limitations. Receiving Water Limitation found in Section VI(B) of the General Permit prohibits storm water discharges and authorized non-storm water discharges to surface water that adversely impact human health or the environment.

Discharges that contain pollutants in concentrations that exceed levels known to adversely impact aquatic species and the environment also constitute violations of the General Permit Receiving Water Limitation.

Applicable Water Quality Standards ("WQS") are set forth in the California Toxics Rule ("CTR") and the Regional Basin Plan. Exceedances of WQS are violations of the Industrial General Permit, the CTR, and the Basin Plan. Industrial storm water discharges must strictly comply with WQS, including those criteria listed in the applicable Basin Plan. (See *Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1166-67 (9th Cir. 1999).)

The Basin Plan establishes WQS for the Sacramento River and its tributaries, including but not limited to the following:

- Waters shall not contain substances in concentrations that result in the deposition of material that cause nuisance or adversely affect beneficial uses.
- Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.
- Waters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses.

- All waters shall be maintained free of toxic substances in concentrations that are lethal to or that produce other detrimental responses in aquatic organisms.
- Surface waters shall not contain concentrations of chemical constituents in amounts that adversely affect any designated beneficial use.

Information available to EDEN indicates that the Facility's storm water discharges contain elevated concentrations of specific pollutants, as listed below. These polluted discharges can be acutely toxic and/or have sub-lethal impacts on the avian and aquatic wildlife in the Receiving Waters. Discharges of elevated concentrations of pollutants in the storm water from the Facility also adversely impact human health. These harmful discharges from the Facility are violations of the General Permit Receiving Water Limitation.

Further, EDEN puts the Discharger on notice that the Receiving Water Limitations are independent requirements that must be complied with, and that carrying out the process triggered by exceedances of the NALs listed at Table 2 of the General Permit does not amount to compliance with the Receiving Water Limitations. The NALs do not represent water quality-based criteria relevant to determining whether an industrial facility has caused or contributed to an exceedance of a WQS, or whether it is causing adverse impacts to human health or the environment.

Section XX.B. of the General Permit provides that when a facility's industrial storm water discharges and/or authorized NSWDS are determined to contain pollutants that are in violation of Receiving Water Limitations contained in Section VI, the Discharger must conduct a facility evaluation to identify pollutant source(s) within the facility that are associated with industrial activity and whether the BMPs described in the SWPPP have been properly implemented, assess its current SWPPP and certify via SMARTS any additional BMPs identified which are necessary in order to meet the Receiving Water Limitations.

The following discharges of pollutants from the Facility have violated Discharge Prohibitions and Receiving Water Limitations of the General Permit and are evidence of ongoing violations of Effluent Limitations:

Sample Collection Date/ Outfall	Parameter	Unit	Sample Analysis Result	EPA Benchmark NAL average/ instantaneous Value	BASIN PLAN/CCR T22 Benchmark NAL value
<b>2016-2017 Reporting Year</b>					
12/15/16 Outfall 3	TSS	mg/L	218	100/400	n/a
<b>2018-19 Reporting Year</b>					
11/29/18 SW-1	Oil & Grease	mg/L	1070	15/25	

Sample Collection Date/ Outfall	Parameter	Unit	Sample Analysis Result	EPA Benchmark NAL average/ instantaneous Value	BASIN PLAN/CCR T22 Benchmark NAL value
11/29/18 SW-2	Oil & Grease	mg/L	50.2	15/25	
11/29/18 SW-2	TSS		117	100/400	
11/29/18 SW-3	Oil & Grease	mg/L	123	15/25	
11/29/18 SW-3	TSS	mg/L	126	100/400	
5/16/19 SW-2	Oil & Grease	mg/L	104	15/25	

California Cascade Building Materials' parameter results for Oil and Grease have elevated it to Level 1 status for the 2018-19 Reporting Year for that parameter.

**A. Failure to Comply with Facility SWPPP**

The Facility SWPPP indicates that the Facility will collect and analyze storm water samples from two qualified storm events within the first half of each reporting year (July 1 to December 31) and two QSEs within the second half of each reporting year (January 1 to June 30).

As detailed above, the Facility missed collecting storm water samples in the reporting years 2015-16, 2016-17 and 2017-18, and 2018-19.

The Facility's Site Map, attached to the Facility's current SWPPP, identifies five discharge locations from which storm water run-off samples are to be collected: Sampling Locations SW1-SW5.

As specified above, California Cascade Building Materials failed to collect storm water samples from all five Sampling Locations during the 2018-19 Reporting Year.

Furthermore, Section X.H.g of the General Permit requires all Dischargers to develop and implement management procedures to ensure that appropriate staff implements all elements of the Facility's SWPPP, including the Monitoring Implementation Plan.



**B. Failure to Update Legally Responsible Person/ Duly Authorized Representative**

The Facility uploaded a revised SWPPP to SMARTS on May 2, 2019. The SWPPP was signed by Jacob Burns as the Mill Manager but failed to indicate that he was the Legally Responsible Person (“LRP”), or to indicate any LRP.

Section XXI.K of the General Permit provides:

1. All Permit Registration Documents (PRDs) for NOI and NEC coverage shall be certified and submitted via SMARTS by the Discharger’s Legally Responsible Person (LRP). All other documents may be certified and submitted via SMARTS by the LRP or by their designated Duly Authorized Representative.
2. When a new LRP or Duly Authorized Representative is designated, the Discharger shall ensure that the appropriate revisions are made via SMARTS. In unexpected or emergency situations, it may be necessary for the Discharger to directly contact the State Water Board’s Storm Water Section to register for SMARTS account access in order to designate a new LRP.
3. Documents certified and submitted via SMARTS by an unauthorized or ineligible LRP or Duly Authorized Representative are invalid.

Section XXI.K.4.a further provides that LRP eligibility for a corporation is limited to the corporation’s responsible corporate officers, including its president, secretary, treasurer or vice president in charge of a principal business function; or the corporation’s facility manager.

All Permit Registration Documents, including updated SWPPPs, uploaded by unauthorized or ineligible LRPs or Duly Authorized Representatives for the Facility are thus invalid.

**C. Failure to Properly Train Employees/Facility Pollution Prevention Team**

Section X.D.1 of the General Permit requires each Facility to establish a Pollution Prevention Team responsible for assisting with the implementation of the requirements of the General Permit. The Facility is also required to identify alternate team members to implement the SWPPP and conduct required monitoring when the regularly assigned Pollution Prevention Team members are temporarily unavailable (due to vacation, illness, out of town business, or other absences).

Section X.H.f of the General Permit also requires that each Facility ensure that all Pollution Prevention Team members implementing the various compliance activities of the

General Permit are properly trained in at least the following minimum requirements: BMP implementation, BMP effectiveness evaluations, visual observations, and monitoring activities. Further, if a Facility enters Level 1 status, appropriate team members must be trained by a QISP.

Based on the foregoing violations, it is clear that California Cascade Building Materials has either not properly established its Pollution Prevention Team, or has not adequately trained its Pollution Prevention Team, in violation of Sections X.D.1 and X.H.f of the General Permit.

California Cascade Building Materials may have had other violations that can only be fully identified and documented once discovery and investigation have been completed. Hence, to the extent possible, EDEN includes such violations in this Notice and reserves the right to amend this Notice, if necessary, to include such further violations in future legal proceedings.

#### **IV. THE PERSON OR PERSONS RESPONSIBLE FOR THE VIOLATIONS**

The entities responsible for the alleged violations are California Cascade Building Materials, Inc., as well as employees of the Facility responsible for compliance with the CWA, and CanWel Building Materials Group, Ltd, and its CEO Amar S. Doman.

#### **V. THE DATE, DATES, OR REASONABLE RANGE OF DATES OF THE VIOLATIONS**

The range of dates covered by this 60-day Notice is from at least July 7, 2015, to the date of this Notice. EDEN may from time to time update this Notice to include all violations which may occur after the range of dates covered by this Notice. Some of the violations are continuous in nature; therefore, each day constitutes a violation.

#### **VI. CONTACT INFORMATION**

The entity giving this 60-day Notice is Eden Environmental Citizen's Group ("EDEN").

Aiden Sanchez  
EDEN ENVIRONMENTAL CITIZEN'S GROUP  
2151 Salvio Street #A2-319  
Concord, CA 94520  
Telephone: (925) 732-0960  
Email: [Edenenvcitizens@gmail.com](mailto:Edenenvcitizens@gmail.com) (emailed correspondence is preferred)  
Website: [edenenvironmental.org](http://edenenvironmental.org)

To ensure proper response to this Notice, all communications should be addressed to EDEN's General Counsel, Hans W. Herb.

HANS W. HERB  
Law Offices of Hans W. Herb  
P.O. Box 970  
Santa Rosa, CA 95402  
Telephone: (707) 576-0757  
Email: [hans@tankman.com](mailto:hans@tankman.com)

#### IV. RELIEF SOUGHT FOR VIOLATIONS OF THE CLEAN WATER ACT

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any “person,” including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), §1362(5).

Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Clean Water Act subjects the violator to a penalty for all violations occurring during the period commencing five (5) years prior to the date of the Notice Letter. **These provisions of law authorize civil penalties of \$37,500.00 per day per violation for all Clean Water Act violations after January 12, 2009, and \$51,570.00 per day per violation for violations that occurred after November 2, 2015.**

In addition to civil penalties, EDEN will seek injunctive relief preventing further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), declaratory relief, and such other relief as permitted by law.

**Lastly, pursuant to Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d) and California Code of Civil Procedure §1021.5, EDEN will seek to recover its pre and post-litigation costs, including all attorneys’ and experts’ fees and costs incurred** (see *Southern California Alliance of Publicly Owned Treatment Works v. U.S. Environmental Protection Agency* (9<sup>th</sup> Cir. 2017) 853 F.3d 1076; *Vasquez v. State of California* (2008) 45 Cal.4th 243).

#### V. CONCLUSION

The CWA specifically provides a 60-day notice period to promote resolution of disputes. EDEN encourages California Cascade Building Material or CanWel Building Material’s counsel to contact **EDEN’s counsel** within 20 days of receipt of this Notice to initiate a discussion regarding the violations detailed herein. Please do not contact EDEN directly.

During the 60-day notice period, EDEN is willing to discuss effective remedies for the violations; however, if California Cascade/CanWel Building Materials wishes to pursue such discussions in the absence of litigation, it is suggested those discussions be initiated soon so that they may be completed before the end of the 60-day notice period. EDEN reserves the right to file a lawsuit if discussions are continuing when the notice period ends.

Very truly yours,



AIDEN SANCHEZ  
Eden Environmental Citizen's Group

Copies to:

Andrew Wheeler: [wheeler.andrew@Epa.gov](mailto:wheeler.andrew@Epa.gov)

Administrator, U.S. Environmental Protection Agency

State Water Resources Control Board  
Eileen Sobeck, Executive Director  
[eileen.sobeck@waterboards.ca.gov](mailto:eileen.sobeck@waterboards.ca.gov)

Mayumi Okamoto, Office of Enforcement: [Mayumi.Okamoto@waterboards.ca.gov](mailto:Mayumi.Okamoto@waterboards.ca.gov)  
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Jennifer Pierce: [pierce.jennifer@epa.gov](mailto:pierce.jennifer@epa.gov)  
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